



*State of Louisiana*

**OFFICE OF  
STATE INSPECTOR GENERAL**

**SETTLEMENT ON THE MODIFIED MECHANICAL  
WASTEWATER TREATMENT PLANTS**

Report by

Inspector General Bill Lynch

Prepared for

Governor M.J. "Mike" Foster, Jr.

May 11, 2000

File No. 1-00-0016



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STATE INSPECTOR GENERAL**

**Settlement on the Modified Mechanical  
Wastewater Treatment Plants**

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March 10, 2000

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# Settlement on the Modified Mechanical Wastewater Treatment Plants

The Department of Health and Hospitals failed to determine the suitability of a possible 600 mechanical wastewater treatment plants installed at homes without sewer connections in the Lafayette area because of what it claimed were cost and feasibility considerations in identifying each of the questionable systems.

A competitor had complained previously about the installations and the Office of Inspector General issued a report in February, 1998, citing the failure of DHH sanitarians to inspect the facilities at the time of installation. On Jan. 10, 1997, DHH began legal proceedings that eventually led to an agreement which appears to heavily favor the installer because it addresses so few of the units believed to have been modified.

DHH claimed its position became untenable when an administrative law judge required it to identify each of the suspect 600 units rather than require the installer to identify where the suspect devices were installed. It therefore became incumbent on DHH to establish that each of the suspect plants, buried under ground, did not comply with state law. The cost of digging up and identifying each installation was considered prohibitive in light of the belief that the installed systems might not be a health hazard despite the lack of certification by a testing laboratory. The department also ran into resistance from home owners who were reluctant to have their yards dug up.

Only six treatment plants were examined, each determined not to be in compliance with the law, before DHH entered into an agreement with the manufacturer, McGrew Construction Co., and the installer, Ace Plumbing Co. Under the agreement, although they deny violations, both agreed to bring the six identified units into compliance in exchange for which the state would not pursue action on the remaining of the possible 600. It also provided for corrections to be made on 46 units of different Cajun Aire models.

The program manager of Sanitarian Services stated that the department does not feel the installed systems pose an “immediate” health hazard. Whether the remaining units represent a long term public health hazard remains to be seen.

It seems DHH could have and should have inspected more of the other possible 600 units before entering into such a one-sided agreement.

The settlement with Ace Plumbing and McGrew Construction is the subject of ongoing litigation. Two competitors, including Roland Romero, whose complaint initiated these proceedings, are attempting to appeal the settlement.

## Background

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Mr. Romero, owner of Duplantis Concrete Products, New Iberia, complained May 30, 1996, to DHH that a competitor, Ace Plumbing Co., Duson, was violating the state sanitary code by installing waste water treatment plants that were not in compliance with state law. Ace Plumbing is owned by John Pomier.

On June 14, 1996, the State Health Officer issued an emergency public health order to Mr. Pomier to cease and desist manufacturing, marketing and installing Cajun Aire individual sewage treatment plants. The order also required Mr. Pomier to furnish Public Health a list of all plants sold and installed in Louisiana by his company and/or subcontractors since he became a Cajun Aire manufacturer in November, 1994.

On Jan. 10, 1997, DHH filed a petition for an administrative hearing for the purpose of identifying the modified units.

Mr. Romero complained to the Office of Inspector General that DHH had failed to act properly on his complaint. On Feb. 18, 1998, the Office of State Inspector General released a report on Mechanical Wastewater Treatment Plants to the public. The report stated that Ace Plumbing improperly manufactured and then installed approximately 600 plus mechanical units marketed under the trade name "Cajun Aire."

The original Cajun Aire 500 plans, made by McGrew Construction Co., Inc., located in Bossier City, were approved by the Office of Public Health. However, both McGrew and Ace Plumbing were accused of modifying the devices without getting approval for the changed design. The modifications included the raising of the inlet and outlet pipes resulting in an increased water level within the tank.

The 600 plus units in question are of the Cajun Aire 500 model. The Cajun Aire 500 is an approved 500 gallons per day wastewater treatment system. Sewage entering a Cajun Aire 500 plant is treated before the effluent is discharged into the environment.

The cost advantage of the modified unit was that it eliminated the necessity for a pump in some installations, which could cost from \$100 to \$300.

The state sanitary code permits only the installation of state approved plant designs and, prior to design approval, requires testing by an independent laboratory under conditions specified by the state.

Section 13:012-3 of the sanitary code states, “a final permit, which shall also be in writing, may be issued only upon assurance that the individual sewage system has been properly installed. In the case of individual mechanical plants, such assurance of proper installation shall be in the form of a completed ‘Certification of Installation’ form submitted to the State Health Officer by the licensed installer who performed the actual installation.”

Effective July 1, 1997, DHH requires that once the certification of installation is received, an on-site inspection will be conducted by a sanitarian to verify that the observable components of the mechanical plant have been installed according to code. At this time, the plant should be operating, it simply won’t be covered over with soil and turf until after this inspection. Prior to the establishing of this procedure, under certain conditions, there were no on-site inspections of some units at all by a sanitarian.

In its response, DHH said it has implemented new steps to prevent the installation of improper wastewater treatment plants.

## Settlement Negotiations Chronology

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On Jan. 10, 1997, the Office of Public Health filed a petition for an administrative hearing to require Ace Plumbing to identify all the units it sold and bring the Cajun Aire systems into compliance with state law. Although the law creating an administrative law judge system in the Department of Civil Service was already in effect, the new body was still in its developmental stages. This system ultimately caused agencies to lose some of the control over the administrative process they had assumed in the past.

During the course of proceedings, DHH explained what testing would be necessary to address the applicable standards. Ace Plumbing indicated tests were being conducted on the modified system by a recognized independent consultant at Baylor University.

Some testing was done and the results were favorable, but this testing was not sufficient. The test was limited to the air compressor and the effect of increased depth on the CFM (cubic feet per minute) air flow. The results were generally favorable and suggested the change might have a beneficial effect on performance. However, the Baylor report stated, "Without benefit of a full Standard 40 test protocol it is not prudent to say that this amount of change would not be a problem for overall performance of the system."

DHH was informed subsequent to its filing of the petition that McGrew Construction provided altered Cajun Aire plant molds to Ace Plumbing (before Ace Plumbing made additional modifications). Accordingly, a supplemental and amending petition was submitted on Sept, 18, 1997 to add McGrew as a defendant also.

Negotiations to reach a compromise settlement continued but got nowhere. DHH finally withdrew from settlement discussions and requested a hearing date be rescheduled in a letter dated May 5, 1998.

An effort to intervene in the case was made by Mr. Romero on May 15, 1998, but was rejected by the administrative law judge.

The department's efforts in the proceedings were hampered somewhat by changes in attorneys handling the case.

On Sept. 4, 1998, DHH filed a motion to dismiss, claiming the administrative law court lacked jurisdiction because it had turned the issue around from an investigative hearing to have Ace Plumbing identify the suspect sites to requiring DHH to identify them before proceeding. However, the judge rejected the motion in February, 1999.

DHH was forced to proceed with the administrative hearing although it had only developed evidence that 52 units (6 of the 600 suspect Cajun Aire 500 units and 46 other units) were improperly manufactured.

The compromise was reached March 22, 1999, with the defendants agreeing to bring the six identified Cajun Aire 500 installations into compliance and the state dropping pursuit of any action on the remaining of the possible 600. The settlement also required 46 Cajun Aire 750 and 1000 units that were missing pre-treatment tanks to be brought into compliance.

DHH-Legal asserts the settlement was better than anything DHH could have gotten in court without having specific evidence that each of the 600 suspected units was not in compliance.

## Identification of Modified Units

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One of the practical problems facing DHH in determining compliance was the lack of cooperation from home owners who did not wish to have their yards dug up, the agency claimed. Doug Vincent, Engineering Services program manager, said he sent letters in April 1998, to about 20 residents whose permits reflected potential problems. Only six agreed to have their units inspected, he said. All six units were determined to be modified units.

The request to have tests done was made by DHH attorneys Barbara Puchot and Jack Westholz, Ms. Puchot stated. Ms. Puchot said the tests should have been done before the petition was filed. The tests were conducted by DHH staff over parts of three days. George Robichaux, Engineer Manager of the sewerage unit, said it only took 10 to 15 minutes per unit to complete the tests he was instructed to perform. He said about five minutes was all that was needed to uncover each of the inlet and outlet pipes by hand shovel, if not exposed to begin with.

Mr. Robichaux estimated that under ideal conditions, a three man team should be able to inspect 20 units a day. However, other DHH officials disagreed with these time estimates and said it would take much longer. They concluded that the time and effort required to set up and carry out each examination made the cost too prohibitive.

Dr. Jimmy Guidry, assistant secretary, stated the decision was made not to inspect any more home plants before he took over. He said it was probably weighed against doing all their other business responsibilities, including, in particular, restaurant inspections, which he said have a much more critical impact on public health. Dr. Guidry said DHH placed more emphasis on negotiations to get the modified units tested and he didn't know why Ace Plumbing wouldn't have the test done.

Ms. Puchot stated that without inspection of each unit, the department did not have the direct proof the unit was modified which was needed in the administrative hearing.

In the original cease and desist order, DHH asked for the location of all of the units installed by Ace Plumbing, but failed to ask for the sites of the modified plants. Ace Plumbing supplied the list. Ms. Puchot said that once the petition to have a hearing was filed, the department then could not force the defendant to tell them where the modified units were.

Of the six units in the settlement, on Dec. 1, 1999, work on five of the six was complete and the compliance date was extended to March 2000 by the Administrative Law Judge.

## Public Health Hazards

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Regarding the possibility of faulty units, James Antoon, program manager of Sanitarian Services, Division of Environmental Health Services stated, “All improper sewage disposal can cause water supply contamination with shallow wells and pollution to regular surface bodies of water. It’s an excellent reservoir for mosquito breeding; a ready reservoir for the infection of children with all the various diseases that are associated with water borne illnesses - polio, typhoid fever, hepatitis – all of those types of infections.”

He said that if a modified unit were truly a health hazard, then the modifications would have to be changed back to the approved specifications. He also said if the device is operating appropriately, as the limited test indicates, then you could assume that it wouldn’t create any more problems than the other 150,000 or so plants in the state.

Mr. Antoon said that DHH had no immediate concern about these modified units, unless something is reported.

## *Conclusions:*

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1. DHH should not have accepted a settlement requiring the correction of only six modified treatment plants without first making greater effort to identify more of the modified Cajun Aire 500 units.
2. The performance of the modified units is unknown.
3. Whether the modified units pose a long term health hazard is unknown.

*Recommendation:*

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4. DHH should take steps to ensure that the modified units do not endanger the public health, which may include having the modifications tested, identifying the specific modified units and evaluating their performance, and/or, if necessary, bringing all units into compliance with the approved design or required performance specifications.

*Management Response:*

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See Attached.

BL/CW

File No. 1-00-0016



M.J. "Mike" Foster, Jr.  
GOVERNOR

STATE OF LOUISIANA  
DEPARTMENT OF HEALTH AND HOSPITALS



David W. Hood  
SECRETARY

January 14, 2000

Mr. Bill Lynch  
State Inspector General  
State Capitol Annex  
Baton Rouge, LA 70804

Re: File No. 1-00-0016

Dear Mr. Lynch:

I have examined your final draft of the report regarding "Settlement on the Modified Mechanical Wastewater Treatment Plants." Let me again thank you for taking into consideration both the comments of the DHH General Counsel, Frank Perez, in his correspondence of December 17, 1999, as well as the additional comments offered in our recent meeting with members of your staff.

There remain, however, several significant issues which are not clearly stated and which are not addressed in the report's Conclusions or Recommendations.

First, I would reiterate that we have no information or indication whatsoever that the modified units pose any threat to public health or would result in any adverse health impacts. Under the circumstances, we had no reason not to follow advice of legal counsel with respect to the technical merits of the case.

Most important, I feel that I must emphasize the actions of the Office of Public Health that have been taken in response to this situation to address prior shortcomings and preclude or minimize the possibility of such a situation ever occurring again. OPH, through its Division of Environmental Health Services, has actively taken such steps, including promulgation of new regulations in January of 1999 which, among other things incorporate:

- Use of an up-to-date national standard for the testing and certification of individual mechanical plants
- American National Standards Institute (ANSI) accreditation of testing facilities
- Continuing oversight and annual audits of each plant manufacturer (including any sub-manufacturers, dealers and installers) by the ANSI testing facility
- New procedure for the Licensing of the plant manufacturers, with licenses which must be renewed annually, and which can be immediately suspended upon the discovery of improper activity
- Mandatory liability insurance for plant manufacturers, dealers and installers licensed to do business in Louisiana
- Mandatory semi-annual maintenance checks individual mechanical plants

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"AN EQUAL OPPORTUNITY EMPLOYER"

Mr. Bill Lynch  
January 14, 2000  
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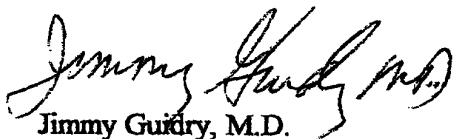
In fact, if a similar situation occurred under the new regulations, the manufacturer's license, as well as that of any distributor/dealer/installer, would be immediately suspended, before any significant number of installations could occur, and an investigation launched into the matter. The investigation would also involve the ANSI testing facility, and could, therefore, ultimately result in the manufacturer losing ANSI certification, which would preclude the sale of the plant in any other state as well. Thus, there is considerable incentive under the new regulations for manufacturers to strictly adhere to the rules. There is also the newly required insurance to cover the expense of any improper installations which must be replaced.

Finally, most, if not all, of the individuals involved in this issue at its outset, are no longer with the agency. This resulted in a lack of continuity in the handling of the case. During my tenure as Assistant Secretary, the Division of Environmental Health Services is under the leadership of not only a new Division Director, but also a new Chief Sanitarian, Chief Engineer, and Individual Sewage Program Manager.

This agency has not taken this situation lightly, and I would urge your inclusion of this fact in your report via the information above.

Thank you again for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jimmy Guidry M.D.", with a stylized flourish at the end.

Jimmy Guidry, M.D.  
Louisiana State Health Officer

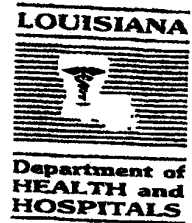
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M. J. "Mike" Foster, Jr.  
GOVERNOR

STATE OF LOUISIANA  
DEPARTMENT OF HEALTH AND HOSPITALS

January 18, 2000



David W. Hood  
SECRETARY

Mr. Bill Lynch -  
State Inspector General  
State Capitol Annex  
Baton Rouge, Louisiana 70804

Re: Settlement on the Modified Mechanical Wastewater Treatment Plants No. 1-00-0016

Dear Mr. Lynch:

On behalf of the Department of Health and Hospitals (DHH), Bureau of Legal Services, I concur and agree with your report except with regards to conclusion No. 1. The reason I disagree with your conclusion No. 1 is that if we had not settled and if we had tried the case on the merits and won, the most we would have gotten is exactly what we obtained in the settlement agreement.

As you know Carol Haynes and I inherited this case from Jack Westholz and Barbara Puchot. In fairness to previous legal counsel, at the time the original petition was filed (January 10, 1997) the custom and the practice was different than it is today. The then newly created Division of Administrative Law put a totally different spin on our case by imposing on DHH the burden of identifying and proving all the alleged modified units, whereas the original petition sought the Administrative Law Judge's assistance in identifying such units.

We had no other options. We could either go to trial or we could settle. We got as much in the settlement as we could possibly have gotten if successful at trial. Hypothetically if we could go back in time to 1996 yrs we could have done a lot of things different. We could have developed the evidence necessary to prove more of the units in question. Unfortunately we can not go back in time. From a legal perspective we did the very best we could with what we had to work with.

I would like to thank you, Peter Wright, and Courtland Warner for meeting with us and giving us an opportunity for input.

Sincerely,

Frank H. Perez  
General Counsel

FHP/br

cc: Jimmy Guidry, M.D.  
Carol Haynes  
Maddie McAndrew